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COMMITTEE AGAINST TORTURE

Seventeenth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 275th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 19 November 1996, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.275/Add.1.

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Uruguay (CAT/C/17/Add.16)

1. At the invitation of the Chairman, Ms. Rivero, Mr. Cardinal Piegas and Mr. Pecoste (Uruguay) took places at the Committee table.

2. The CHAIRMAN invited the members of the Uruguayan delegation to reply to the questions put to them at the preceding meeting.

3. Mr. CARDINAL PIEGAS (Uruguay) said, with respect to the penalties incurred by the perpetrators of acts which amounted to torture and abuse within the meaning of the Convention, that offences against the moral and physical integrity of detainees, in the absence of serious injury, were punishable by three months' to two years' imprisonment. For more serious acts, a maximum penalty of 30 years' imprisonment could be imposed, usually in cases where acts of torture resulted in death. Both legal practice and doctrine took into account not only physical injury, but also psychological abuse; it could therefore be considered that the offence of torture, as defined in article 1 of the Convention, was included in various forms in Uruguay's domestic law.

4. Mr. PECOSTE (Uruguay), replying to a question on the possibility of expediting the procedure for considering a bill submitted to the Parliament, said that the Constitution empowered the Government to submit emergency bills. Each chamber had a maximum of 45 days in which to consider a bill when the Government had indicated that it wished to apply the emergency procedure. If the bill was not adopted within the established time-frame, it could not be reconsidered before the next legislative session. Once a bill was before the Parliament, the Government could no longer expedite the consideration procedure, since that would run counter to the principle of the separation of powers.

5. Mr. CARDINAL PIEGAS (Uruguay) indicated, with respect to the legislative measures taken to prevent acts of torture in penal institutions, that the draft new Code of Penal Procedure, which had been under consideration at the time of the Committee's examination of the initial report, had not been adopted. Following the most recent elections, the four parties represented in Parliament had unanimously concluded that a prompt reform of the Code of Penal Procedure was necessary. To that end, a commission had been set up, at the initiative of the Supreme Court of Justice, to elaborate a draft code. The Government had then prepared another draft, which represented a synthesis of the previous draft of 1991 and the draft of the commission mandated by the Supreme Court of Justice. Both drafts, which were quite similar, had been submitted to the Parliament, and it appeared that Uruguay would soon have a new Code of Penal Procedure. Moreover, it should be noted that the Inter-party Commission on Public Security had also reached an agreement on measures for improving the prison system. The commission instituted by the law on civil security of 12 July 1995 had submitted to the Government a report containing a study on the prison system, as well as a bill on the application

of penalties. Whereas the draft new Code of Penal Procedure currently dealt only with the enforcement of sentences, the bill prepared by the aforementioned commission also dealt with the situation of persons awaiting trial, of whom there were many. The report submitted by the commission was in all respects interesting, and demonstrated the authorities' determination to improve the prison system.

6. Mr. PECOSTE (Uruguay) gave additional information on the Police Attorney's Office (Fiscalía Letrada Policial) (see report, para. 20). That Office, which was under the sole authority of the Minister of the Interior, was competent to supervise the conduct of police officers in all of the administrative divisions of the police force. It reported irregularities in the functioning of police services, carried out investigations, formulated opinions, determined the responsibility of officers suspected of irregularities, received complaints from individuals and made proposals on legislative and regulatory matters, all in a purely administrative context and with full independence. Between 1 June and 31 December 1995, the Police Attorney's Office had formulated 177 opinions and received 38 complaints. Between 1 January and 27 October 1996, it had formulated 205 opinions and recorded 64 complaints. During the latter period, it had requested the following penalties: nine dismissals, including one for incompetence; seven suspensions; five transfers; two referrals to the courts; and three arrests. The number of cases that went to court was small because, most of the time, legal authorities had already been informed of alleged infractions through other channels. In general, judicial and administrative procedures were consistent; however, the repercussions of a given act could be very serious from an administrative standpoint but negligible in terms of criminal law, or vice versa.

7. One member of the Committee had expressed surprise that so many of the officers accused were still in their posts, and had wondered, in that regard, whether the administrative responsibility of the officers had really arisen in cases of wrongdoing. The administrative responsibility of the officers certainly arose, where applicable. The discrepancy between the figures provided was due, on the one hand, to the application of the principle of the presumption of innocence and, on the other, to respect for the principle of the separation of powers.

8. With respect to the legal context in which abuses perpetrated by law enforcement officials were punished, an administrative measure involving dismissal would be immediately applied to an officer who committed an act of torture, and judicial proceedings would be instituted against him. Since the Committee was concerned by the fact that Uruguayan law did not characterize torture as a separate crime, he emphasized that, in practice, Uruguayan law provided for various means of punishing acts of torture and abuse. For example, the administrative and penal authorities could avail themselves of Act No. 16,707, article 28 of which stipulated that the Minister of the Interior must instruct his personnel in accordance with the provisions of the Code of Conduct for Law Enforcement Officials adopted by the United Nations General Assembly on 17 December 1979. Police officers were therefore obliged, inter alia, to respect article 5 of the Code of Conduct, which provided that no law enforcement official might inflict, instigate or tolerate any act of torture or invoke superior orders or exceptional circumstances as a

justification of torture or other cruel, inhuman or degrading treatment or punishment. Consequently, the obligation of "due obedience", whose legitimacy the Committee had contested during its consideration of the initial report, could no longer be invoked by police officers in connection with torture.

9. Mr. CARDINAL PIEGAS (Uruguay) elaborated on the reasons why due obedience could no longer be invoked by police officers. It must be recalled, first, that under Uruguayan law, international treaties had the force of law and their legal provisions were immediately incorporated into domestic legislation. Due obedience was referred to in the Penal Code of 1934, and the Convention had entered into force for Uruguay in 1987. The provision of the Convention stating that an order from a superior officer could not be invoked as a justification of torture (art. 2, para. 3) was thereafter applicable in Uruguay and took precedence over the provision of the Penal Code on due obedience.

10. In the context of the penal reform, it should be noted that a Centre for Judicial Studies had been established eight years earlier and that it provided training not only for judges and prosecutors, but also for all technical and administrative personnel of the judicial branch. Particular emphasis was placed on constitutional law and on human rights issues in general.

11. Ms. RIVERO (Uruguay), returning to the issue of training, explained that the agreement concluded between Uruguay and the Centre for Human Rights provided for the implementation of a project that focused essentially on training. The project was divided into two stages, the first of which had been completed; the participants in the training courses offered, which were designed for many categories of personnel (those working in the prison system, judicial personnel, physicians, etc.), had expressed great satisfaction. Following the publication of the evaluation report - a copy of which would be sent to the Committee - the second stage would be launched, in 1997 or 1998 at the latest.

12. She had no specific information on the issue of a possible rehabilitation centre for victims of torture. However, she had heard that non-governmental organizations had taken a number of initiatives which did not involve State participation. For example, a multidisciplinary team consisting inter alia of psychologists and physicians had been organized by a non-governmental organization, SERPAJ (Service, Peace and Justice). Nonetheless, the State was by no means uninterested in the issue, as shown by the programmes of the Ministry of Health, which included measures to assist victims of torture or degrading treatment. While the approach was somewhat different, the intention was the same.

13. She stressed Uruguay's interest in its dialogue with the Committee. She recalled the difficulties and hesitations which her country had experienced during the preparation of its initial report and which it had overcome through cooperation with the Centre for Human Rights.

14. Mr. PECOSTE (Uruguay) added, with respect to training, that there was a national police school where a human rights course had recently been included as part of the curriculum. The training was supplemented by lectures on more specific issues. In addition, the police school provided instruction designed especially for the officials of penal institutions, whose background and career needs differed from those of police officers.

15. A number of questions had been asked about the Citizens' Security Act (No. 16,707), which was indeed in force. The first articles - up to article 27 - replaced certain sections of the Penal Code and Code of Penal Procedure with provisions meeting international standards and judges had been required to apply them since 31 July 1995. Other articles modified article 5 of the Police Organization Act, particularly in regard to the use of weapons and force by the police. The use of force had to be justified, progressive and proportionate. The Act also modified the system for granting leave to detainees, which was no longer the responsibility of the director of the penal institution and was approved instead by the judge. In addition, it provided for the organization of training courses for police officials, as well as for the implementation of a policy of prevention and awareness-raising aimed at young people and focusing especially on young victims of sexual abuse and juveniles with drug-related problems. Lastly, article 38 made the executive and judicial branches jointly responsible for taking measures to assist victims of abuse of authority and domestic violence.

16. Mr. CARDINAL PIEGAS (Uruguay), noting the Committee's concern about the slowness of judicial proceedings and about how the situation could be improved, said that the problem related not so much to persons still to be brought to court as to detainees in whose cases a judgement had not yet been handed down. Thus, applications for habeas corpus were extremely rare, since there were no prisoners who had not been the subject of a judicial procedure. However, there was a provision in the Constitution which stipulated that persons charged with offences punishable by more than two years' imprisonment could not be released pending judgement. That rule could not easily be relaxed owing to the cumbersomeness of the process of amending the Constitution. The judicial authorities were, however, endeavouring to apply the rule with flexibility in a variety of ways. First of all, the Pact of San José required a hearing to be conducted within a reasonable time, and on that basis almost all judges would order the defendant's release if the trial was not completed in a reasonable period of time. Furthermore, the Supreme Court conducted an annual review of the cases of all prisoners awaiting sentencing and ordered their release if they had already been held for too long in detention. Clearly, in a procedure of that kind, an element of arbitrariness could not be ruled out. It was a welcome development, therefore, that two proposed amendments to the Code of Penal Procedure were now before the Parliament, one seeking to define what was meant by "a reasonable time" for a hearing and to allow for release from custody when the time-limit was exceeded, and the other, subject to action by the Supreme Court, aiming to provide alternatives to imprisonment. The political will to secure the passage of the second amendment was very strong. There was also a strong willingness to grant the release on bail of persons held in detention for a long time awaiting judgement. In any event, it should be emphasized that cases in which provisional detention exceeded the term of the punishment handed down by the judge were extremely rare; the solution of imposing a term of imprisonment exactly equal to the time spent in provisional detention was also very rarely adopted. Lastly, the law provided for compensation in the event of unjustified provisional detention. The State was held strictly liable in such cases.

17. Compensation for injurious acts by the administration was a matter for the ordinary civil justice system and the individual concerned had to bring an

action for damages before the administrative court. Under the Constitution, the State automatically bore strict liability in the event of infringement of an individual's rights by a public official. It was not even necessary to identify the official for the purpose of such proceedings, although that did not prevent measures from being taken against the official in question if he was identified. Once a judicial decision was rendered, however, a victim believing the compensation awarded to be inadequate could not sue the official concerned, by virtue of the principle of res judicata.

18. As to the value of confessions obtained under torture, it should be pointed out that such confessions would be systematically inadmissible. The law in fact allowed for the accused to make a statement only before the judge hearing the case and in the presence of his counsel, failing which the statement was not legally valid. Confessions did not in themselves represent conclusive evidence when they were not corroborated by other elements. Jurisprudence supported the law and the courts considered that statements made to the police had no value. The two proposed amendments to the Code of Penal Procedure confirmed that rule and furthermore prohibited any administrative body - and hence the police, since there was no separate criminal investigation service in Uruguay - from taking down an individual's statement and making him sign it.

19. Mr. GONZALEZ POBLETE thanked the Uruguayan delegation for the detailed information it had supplied to the Committee, confirming the interest of the Uruguayan Government in the prevention and eradication of the practice of torture. He wished, however, to point out that the Convention against Torture, like the Inter-American Convention to Prevent and Punish Torture, provided for States parties to incorporate the necessary changes in their legislation to harmonize it with the international instruments. The Committee urged the Uruguayan authorities to ensure the compatibility of domestic law with the Convention.

20. The CHAIRMAN said that, if the crime of torture was to be punishable in the appropriate manner, it had to be provided for as a statutory offence. That was why the Committee placed so much emphasis on the need for States to adopt a definition of torture that fully reflected the provisions of article 1 of the Convention.

21. The Uruguayan delegation withdrew.

The public part of the meeting was suspended at 4.45 p.m. and resumed at 5.50 p.m.

22. The Uruguayan delegation took places at the Committee table.

23. The CHAIRMAN invited the Uruguayan delegation to take note of the conclusions and recommendations adopted by the Committee after its consideration of the report of Uruguay.

24. Mr. GONZALEZ POBLETE (Country Rapporteur) read out the conclusions and recommendations of the Committee:

"The Committee considered the second periodic report of Uruguay (CAT/C/17/Add.16) at its 274th and 275th meetings, on 19 November 1996 (see CAT/C/SR.274 and SR.275), and adopted the following conclusions and recommendations:

A. Introduction

The members of the Committee welcome the presentation of the second periodic report by the delegation of Uruguay and note that Uruguay was one of the first countries to ratify the Convention, that it has not made any reservations and that it has recognized the optional procedures set forth in articles 20, 21 and 22 of the Convention.

Uruguay is also a party to the Inter-American Convention to Prevent and Punish Torture.

The Committee welcomes the fact that the Uruguayan delegation included representatives of the executive and the judiciary and that the report was prepared with the participation of official institutions such as the Supreme Court of Justice, the Ministry of Education and Culture and the Ministry of the Interior, as well as non-governmental organizations such as Service Peace and Justice and the Institute for Legal and Social Studies of Uruguay, which enjoy well-deserved prestige in the area of the protection and promotion of human rights. In the Committee's view, such cooperation clearly shows that the eradication of the practice of torture has been elevated to the level of national policy that must be pursued by the authorities and society as a whole.

B. Positive aspects

The report describes a series of measures that attest to the authorities' concern to achieve the maximum harmonization of legislation and administrative procedures with the requirements of the Convention.

Among these measures, mention should be made of the bills on crimes against humanity, on the establishment of courts of enforcement and supervision and on the parliamentary commission set up to examine issues relating to prisons.

The Committee also appreciates the establishment of the Honorary National Commission for the Amendment of the Code of Penal Procedure, through Act No. 15,844, and of the Honorary Commission on the improvement of the prison system, through Act No. 16,707 of July 1995.

The establishment of a working group on the national prison system, made up of representatives of the non-governmental organizations listed in paragraph 23 of the report, which is developing a programme of systematic visits to penal institutions, is in the Committee's view a development that is worthy of being noted and held up as an example. Some of the proposals formulated by the working group from a multi-disciplinary point of view, which are described in the report,

have been welcomed by the Government and are an indication of the working group's serious commitment; for this reason it should be given further support by the Government and institutionalized.

Where medical ethics are concerned, mention should be made of the establishment of a Committee on Medical Ethics and Academic Conduct within the Faculty of Medicine of the Universidad de la República through Decree No. 258/92, which for the first time in domestic law regulates the ethical standards applicable to medical conduct, and of the Uruguayan Medical Association's adoption by a direct vote of its own Code of Medical Ethics.

C. Factors and difficulties impeding implementation

(a) The slowness of the legislative process for considering and adopting the bills mentioned earlier;

(b) The fact that the technical cooperation agreement signed in 1992 between the Centre for Human Rights and the Ministry of Foreign Affairs of Uruguay has been suspended. The three projects on awareness-raising and training in the application of international human rights instruments adopted under the agreement in 1992, for prison officers, judicial personnel and doctors, were positive initiatives, and it is regrettable that they have been ended.

D. Subjects of concern

The Committee notes and regrets the State party's considerable delay in giving effect to the recommendations it made during the consideration of Uruguay's initial report. The Committee is particularly concerned at the following:

(a) The continuing gaps in Uruguayan legislation which are impeding the full implementation of the provisions of the Convention.

(b) The lack of a provision introducing a definition of the crime of torture into domestic law, in terms compatible with article 1, paragraph 1, of the Convention.

(c) The persistence in Uruguayan law of provisions on obedience to a superior, which are incompatible with article 2, paragraph 3, of the Convention.

E. Recommendations

The Committee welcomes the series of legal and administrative measures described in the report, which attest to the State party's determination to fulfil the obligations it assumed on promptly ratifying the Convention.

It regrets, however, the considerable delay in implementing them.

The Committee reminds the State party that it must complete the legal reforms needed to bring its internal legislation into conformity with the provisions of the Convention, in particular as regards the definition of torture as a specific offence and the elimination of obedience to a superior as exculpation from the crime of torture.

It also urges the State party to improve the measures taken to prevent the torture of persons deprived of their liberty and strengthen protection in prisons."

25. Mrs. RIVERO (Uruguay) thanked the Committee for its observations and expressed appreciation to the Centre for Human Rights for the unfailing support extended to her country; the Centre played a crucial role as an intermediary between the Committee and States parties. She had taken most careful note of the Committee's recommendations and suggestions and shared its concerns, in particular regarding the slowness of the parliamentary procedure; she would draw her Government's attention to the matter and hoped that Uruguay's next report would attest to the progress made in that respect.

26. The CHAIRMAN welcomed the fruitful dialogue, which he was sure would be pursued with the State party.

27. The Uruguayan delegation withdrew.

The meeting rose at 6 p.m.